UNITED STATES DISTRICT COURT

Eastern District of Wisconsin

()POSTED

CORPORATE

FIREMAN'S FUND INSURANCE COMPANY as subrogee of City of Racine Plaintiff(s) 21-cv-642 Civil Action No. v. RACINE ZOOLOGICAL SOCIETY

SUMMONS IN A CIVIL ACTION

To: Racine Zoological Society c/o Joanne Dean, Registered Agent 200 Goold Street Racine, WI, 53402

A lawsuit has been filed against you.

Defendant(s)

Within 21 days after service of this summons on you (not counting the day you receive it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

May 24, 2021 Date:

GINA M. COLLETTI, CLERK (

s/ Linda M. Zik, Deputy

Signature of Clerk or



UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN MILWAUKEE DIVISION

FIREMAN'S FUND	
INSURANCE COMPANY,	j
as subrogee of City of Racine,	j ,
)
Plaintiff,) Case No.:
)
V.)
)
RACINE ZOOLOGICAL SOCIETY)
)
Defendant.)
	·

COMPLAINT

NOW COMES THE PLAINTIFF, Fireman's Fund Insurance Company, as subrogee of the City of Racine, Wisconsin, by and through its undersigned counsel, complaining of defendant, and for its Complaint against defendant, states as follows:

PARTIES

- 1. Plaintiff, Fireman's Fund Insurance Companies (hereinafter "Fireman's Fund"), is a corporation duly organized and existing under the laws of the State of California, with its principal place of business located at 225 W. Washington Street Chicago, Illinois 60606 which at all relevant times was engaged in the insurance business and was licensed to issue insurance policies in the State of Wisconsin.
- 2. Plaintiff's insured, the City of Racine, is a municipal corporation of the State of Wisconsin (hereinafter the "City") with its principal place of business located at 730 Washington Avenue, Racine, Wisconsin 53403.

3. Defendant, Racine Zoological Society (hereinafter the "Society"), is a Wisconsin non-stock corporation duly organized and existing under the laws of the State of Wisconsin with its principal place of business located at 200 Goold Street, Racine, Wisconsin 53402.

JURISDICTION AND VENUE

4. Jurisdiction of this court is invoked pursuant to the provisions of 28 U.S.C. § 1332 by reason of diversity of citizenship of the parties. The matter in controversy, exclusive of interests and costs, exceeds the sum of \$75,000. Venue is properly laid in this district pursuant to the provisions of 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

- 5. At all relevant times, the City owed the real and business property known as the Lakeview Community Center located at 201 Goold Street, Racine, Wisconsin 53406 (hereinafter the "Center").
 - 6. At all relevant times, plaintiff Fireman's Fund insured the Center.
- 7. On or about August 2, 2019, the Society entered into a rental agreement titled Community Center Rental Request Form (hereinafter "Rental Request Form") with the City to rent the Center for the period from August 15, 2019 through October 15, 2019. A true and correct copy of the Rental Request Form is attached hereto and incorporated herein as Exhibit A.
- 8. Pursuant to the terms of the Rental Request Form, the renter assumed responsibility for any and all damages done to the center and/or to its contents.
- 9. On or about September 11, 2019, a fire occurred at a cooking stove in the Center which was left on and unattended by a guest invited by the Society, causing a fire that spread throughout the Center (hereinafter the "Fire Loss").

- 10. As a result of the Fire Loss, the City sustained severe and extensive damage to its real and business property and lost income and incurred expenses to repair the damage.
- 11. Pursuant to the terms and conditions of the aforementioned insurance policy, Fireman's Fund made payments to the City in excess of Nine Hundred Sixty-Seven Thousand, Three Hundred Twenty-Two Dollars and Twenty-Seven Cents (\$967,322.27), representing the fair and reasonable value of and/or cost to repair the damages.
- 12. In accordance with common law principles of equitable and legal subrogation and the terms of the insurance policy, Fireman's Fund is subrogated to the rights of the City to the extent of the payments it makes to the City in compensation for the aforementioned damages.

COUNT 1 – NEGLIGENCE

- 13. Plaintiff re-alleges the foregoing paragraphs as though fully restated herein.
- 14. Defendant owed the City of Racine a duty to use and operate the premises of the Center in a good and safe manner, and to make sure that it was used and operated in a manner so as to protect the property from hazardous conditions that could cause fires.
- 15. The Fire Loss was caused by the negligence and carelessness of defendant and/or by and through its agents, servants, and/or employees, acting within the course and scope of their employments, as follows:
 - a) Failure to exercise reasonable and due care in the supervision and oversight of guests or invitees, including those using and operating equipment that could cause a fire;
 - b) Failure to supervise the use and/or operation of kitchen equipment in a safe and reasonable manner, including allowing and/or leaving the stove on and unattended;

- Failing to adequately inspect the kitchen and kitchen equipment before use and operation;
- Failing to employ agents, servants and/or employees with proper certification,
 knowledge, training and experience to operate kitchen equipment safely;
- e) Failing to ensure invitees or guests possessed the proper certification, knowledge, training and experience to operate kitchen equipment safely;
- f) Failing to properly train, oversee and supervise its agents, servants, guests, invitees and/or and other persons who used or accessed the kitchen;
- g) Failing to ensure invitees or guests are properly trained who used or accessed the kitchen and steps to take in the event of a fire hazard;
- h) Failing to take adequate and necessary precautions to prevent a fire from originating in the premises;
- Failing to ensure that proper and reasonable safety precautions and equipment were in place, including fire extinguisher(s);
- j) Allowing a fire hazard to exist within its leased premises;
- k) Otherwise failing to use due care under the circumstances.
- 16. As a direct and proximate result of defendant's negligence and carelessness, its agents, servants and/or employees acting within the scope of their employment, the City sustained severe and extensive damages.
- 17. In accordance with the terms of the Policy, Fireman's Fund made payments to the City for its aforesaid damages, and is therefore subrogated to the right of recovery to the extent of the payments made.

THEREFORE, Plaintiff Fireman's Fund, as subrogee of the City of Racine, hereby demands judgment in its favor against Defendant Racine Zoological Society, in an amount of \$967,322.27, together with interest, the cost of this action, attorney's fees, and such other relief as this Court deems just and proper.

COUNT 2 – BREACH OF CONTRACT

- 18. Plaintiff re-alleges the foregoing paragraphs as though fully restated herein.
- 19. Prior to the Fire Loss, the City and the Society entered into the Rental Request Form. See Exhibit A.
- 20. The Society, by an through its agents, servants and/or employees, breached the aforementioned contract by committing one or more of the following acts and/or omissions:
 - Failure to exercise reasonable and due care in the supervision and oversight of guests or invitees, including those using and operating equipment that could cause a fire;
 - b) Failure to supervise, use and/or operate kitchen equipment in a safe and reasonable manner, including allowing and/or leaving the stove on and unattended;
 - c) Failing to adequately inspect the kitchen and kitchen equipment before use and operation;
 - Failing to employ agents, servants and/or employees with proper certification,
 knowledge, training and experience to operate kitchen equipment safely;
 - e) Failing to ensure invitees or guests possessed the proper certification, knowledge, training and experience to operate kitchen equipment safely;

- f) Failing to properly train, oversee and supervise its agents, servants, guests, invitees and/or and other persons who used or accessed the kitchen;
- g) Failing to ensure invitees or guests are properly trained who used or accessed the kitchen and steps to take in the event of a fire hazard;
- h) Failing to take adequate and necessary precautions to prevent a fire from originating in the premises;
- Failing to ensure that proper and reasonable safety precautions and equipment were in place, including fire extinguisher(s);
- j) Allowing a fire hazard to exist within its leased premises;
- k) Otherwise failing to use due care under the circumstances.
- 21. By and through the Society's breach of contract, the City sustained damages in the amount of \$967,322.27.
- 22. In accordance with the terms of the Policy, Fireman's Fund made payments to the City for its aforesaid damages, and is therefore subrogated to the right of recovery to the extent of the payments made.

THEREFORE, Plaintiff Fireman's Fund hereby demands judgment in its favor against Defendant, in an amount in excess of \$967,322.27, together with interest, the cost of this action, attorney's fees, and other such relief as this Court deems just and proper.

Jury Demand

Plaintiff demands a trial by jury of this matter.

Respectfully Submitted,

FIREMAN'S FUND INSURANCE COMPANY as subrogee of City of Racine

By: /s/Philip T. Carroll

Philip T. Carroll

COZEN O'CONNOR

123 North Wacker Drive, Suite 1800

Chicago, Illinois 60606 Phone: (312) 382-3147 Fax: (312) 382-3180

pcarroll@cozen.com

EXHIBIT A



CITY OF RACINE PARKS, RECREATION AND CULTURAL SERVICES DEPARTMENT

Print Form

800 Center Street, Room 127, Racine, WI 53403 (262)636-9131

COMMUNITY CENTER RENTAL REQUEST FORM

* PRCS accepts cash, MasterCard, VISA or money order only for payment of all community center rental fees and permits.

* All necessary rental forms, permits and payments must be completed, signed & submitted no later one full week prior to requested event.

* Two (2) hour minimum rental Monday-Thursday. Four (4) hour minimum rental Friday-Sunday.

* An approved permit is only valid if is accompanied by a paid receipt,

the state of the s	* " * " * " * " * " * " * " * " * " * "					
Today's Date: 8/2/19 Community Cer	nter Requested:	LAKEN	(ICH)			
Today's Date: 8/2/19 Community Center Requested: LAKEVIC Date(s) of Reservation: 8/15/19 - 10/15/19				Time Start/End: All Day		
Purpose of Reservation: Lantern Festival at the Racine Zoo		THE ANNUAL MEDICAL	Expected	Attendance: 30		
Renter's Name: Beth Heidorn	 Thirty of granding management of the service of	make manaka manana m	Organization (if any); Ra	icine Zoo	- Annicostrum programmer, acrosphare	
Street Address: 200 Goold Street			City: Racine	St: WI	Zip: 53402	
Email Address: bheidorn@racinezoo.org	all and an extension of the contract of the co	Vita (Angle Commission of the	-9-14-6-14-6-15-15-15-15-15-15-15-15-15-15-15-15-15-	Telephone	#: 262-636-9291	
Alternate Contact Name: Chelsea Locke		Alternate Contact Telephone #: 239-595-4962				
IN MINISTER PROPERTY.	Pontar		- Particular designation of the Control of the Cont	***************************************	4	
Will admission be charged?	☐ Yes	⊠ No	Will donations be solicited?		☐ Yes ☒ No	
Will food or merchandise be sold?		⊠ No	Is this a sporting event?		☐ Yes ⊠ No	
Will malt beverages be sold?	Yes		Will tables & chairs be needed?		*******	
Will malt beverages be consumed?		X No	Chairs # Tables #		Yes No	
Other set up requests:	*********	Acceptance	APP & SAN E PL 33. SUPERIOR SET IN THE SAN EST IN T			
*Two (2) off-duty Racine Police Officers per 7 Police Officers may be required at any event telephone numbers must be submitted one is the responsibility of the renter.	ts at the discreti week prior to t	ion of the i	Community Center Supervisor. Name: The payment of the cost of providing	of police of	ficers and	
	Off duty R	acine Polic	ce Officers required.			
In consideration of the mutual covenants he harmless the city of Racine, its departments, injuries, death or property damage arising or	rein agreed to, officers, agents	sponsorin	ovees for any costs, damages, expens	es or liability	for personal	
* The Community Center is <u>not</u> responsible to the to unforeseen circumstances, cancella * Sponsoring agency or private group agreed * Sponsoring agency or private group agreed prior to event; deposit fee will be returned to area is clean and undamaged. * Sponsoring agency or private group must * Sponsoring agency or private group assisted as for any and all center equipment the	ation may occur is to provide an is to pay security payee via che ist provide the umes responsi	up to 24 h adequate y deposit f ck no less required ibility for	number of chaperones. ee by MasterCard, Visa, cash or money than two weeks after the event has co number of off-duty Racine Police Of any and all damages done to the ce	ncluded pro	vided the rented	
Renter's Signature: 55/14/1/	Pin			g**	Date: 8/2/2017	
Center Superviser's Signature:		Scorber apple pre-	enementario (Standard Landard Standard Charles (Standard Standard Landard Land		Date:	

Case 2:21-cv-00642 Filed 05/24/21 Page 2 of 2 Document 1-1 Case 2:21-cv-00642-PP Filed 06/28/21 Page 10 of 10 Document 10-1